rajshree

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

IN ITS COMMERCIAL DIVISION

COMMERCIAL ARBITRATION APPLICATION NO.174 OF 2022

M/s.Siemens Factoring Pvt. Ltd.] .. Applicant

vs.

Future Enterprises Pvt. Ltd.] .. Respondent

Mr.Rohan Kelkar a/w Siddhesh Rajput and Neeli Sandesara i/b India Law LLP for the Applicant.

Mr.Nirman Sharma a/w Ankita Yadav I/B ALMT Legal, for the Respondent.

CORAM : BHARATI DANGRE, J

RESERVED ON : 23rd February, 2023

PRONOUNCED ON: 1st March, 2023

JUDGMENT :

1] The Respondent – Future Enterprises, a private limited company claiming to be a leading brand, operating retail stores throughout the country and engaged in variety of household, consumer and fashion products, entered into a Master Rental Agreement (in short hereinafter referred to as MRA) on 27.01.2020 with one LIQ Residuals Private Limited (referred to as 'LIQ'), for the purpose of renting equipments. As per the said Agreement, the Respondent (the Renter) would forward a request to LIQ to rent an equipment, pursuant to which the equipment

would be delivered. The signed rental schedule was agreed for the purpose of renting out of the equipments with a stipulation that the rental schedule must be signed by the Authorized signatory of the Renters. By the Master Rental Agreement, the Renter acknowledged that by forwarding a Rental Schedule for acceptance by LIQ, it shall pay the supplier for the equipments supplied by it.

The MRA stipulated the equipments to mean the equipments described in the rental schedule together with the software and manuals supplied with that equipment and to include any part of the equipment or any substitute equipment.

2] In furtherance of the MRA, the Respondent executed Rental schedule for distinct periods on 14.02.2020, 28.02.2020 and 04.03.2020, detailing the equipments to be rented out and also the rental payable by the Renter to 'LIQ'.

As a subsequent event, the LIQ by distinct notification of assignments contained in letter dated 17.02.2020, 20.02.2020 and 04.03.2020, intimated the Respondent/Renter about the assignment of the rental payments in favour of the Applicant i.e. Siemens Factoring Pvt. Ltd, a non banking financial company engaged in the business of providing secured loans against hypothecation of tangible assets and financial leases across the Country and this assignment was

acknowledged by the Respondent.

3] Pursuant to the said assignment, the case of the Applicant is that, a Sale of Receivable Agreements came to be executed between the Applicant and the LIQ on 27.02.2020, 29.02.2020 and 12.02.2020, wherein, LIQ was referred as the 'Company' and the Applicant was described as 'Financier', wherein it was agreed that the Company may sell the receivables under the Rent Agreement and provide collateral securities to the Financier, subject to the terms and conditions agreed upon. As a consequence, the Applicant was assigned the receivables by LIQ, payable to them under the Rental Agreement executed with the Respondent.

The LIQ also executed irrevocable Power of Attorney in favour of the Applicant, thereby nominating/appointing the Applicant as the true and lawful Attorney of LIQ. It is the case of the Applicant that it was authorized to exercise all their rights and remedies under the Rental Agreement, including the recovery of dues from Respondent and for enforcement of underlying securities and exercise all their rights as the owner of the equipments including its sale of the equipments.

4] The dispute arose between the Applicant and Respondent which resulted in issuance of legal notice by the Applicant on 21.06.2022,

calling upon the Respondent to pay a sum of Rs.4,88,06,155/- as on 20.06.2022, alongwith interest at the rate of 12.10 % p.a. till payment and/or realization and additional interest at the rate of 3% from the date of default. According to the Applicant, the Respondent willfully neglected and failed to comply with the demands raised in the notice, which has constrained the Applicant to approach this Court seeking the following relief :

> (a) That this Hon'ble Court be pleased to appoint a Sole Arbitrator, under Section 11 of the Arbitration and Conciliation Act, 1996 to adjudicate and decide the disputes, differences, claims etc. between the parties in terms of the Agreement/Contract."

5] The Respondent on being served is represented through the learned counsel Mr.Sharma who would vehemently oppose the relief being granted in favour of the Applicant, as it is canvassed that there is no valid arbitration agreement between the parties and in absence of it, it is not open for the Applicant to invoke the arbitration and it would not be justified on part of this Court to exercise the power under Section 11 of the Arbitration and Conciliation Act 1996.

Relying upon the decision of the learned Single Judge (*G.S.Patel J*) in case of Vishranti CHSL vs. Tattva Mittal Corporation Pvt. Ltd. (ARBAP No.3311 of 2020), the learned counsel would submit in the wake of Para 17 of the law report, it cannot be assumed that the

Applicant, who is an assignee of LIQ has consented to the arbitration agreement.

By inviting my attention to the notification of assignment letter which is placed on record, the learned counsel would vehemently submit that the said notification bear the signature of LIQ Residual Pvt. Ltd. and respondent has been notified about such an assignment. But since the Applicant has not signed the said assignment, which contain an arbitration clause, where, it is agreed that all disputes, differences and/or claims arising out of or in connection with the agreement shall be settled by arbitration, on being referred to the Sole Arbitrator to be appointed by Siemens Factoring Private Limited, the arbitration cannot be invoked by the Applicant as Section 7 of the Act require an agreement in writing between the parties, from which the intention to refer the disputes to arbitration must be evident. Applying this test, to the present notification of assignment in favour of the Applicant, according to the learned counsel, do not amount to a binding arbitration clause.

The learned counsel would further submit that the general assignment to which reference is made would not cover the ‘arbitration clause’ as in terms of Section 7 of the Arbitration and Conciliation Act, 1996, it is imperative that the arbitration agreement between the parties should be in writing and it may be contained in a contract or it may be

comprised in any other document, provided it satisfy the conditions that are stipulated in Sub Section (4) and (5) of Section 7 of the Act.

Put up in a plinthly manner, the submission is, in absence of an existing arbitration agreement between the Applicant and the Respondent, the Applicant could not have invoked Arbitration and if arbitration cannot be invoked, relief of appointment of Sole Arbitrator cannot be granted.

6] Responding to the aforesaid objection, the learned counsel for the Applicant Mr.Rohan Kelkar would invite my attention to the MRA executed between the 'Renter' and 'LIQ' and by making reference to certain clauses, he would make an attempt to drive home a point, that in terms of the said Agreement, LIQ was defined to mean and include its successors in business, assigns etc. He would submit that the Agreement specifically covered reference in agreement or document as novated, supplemented or replaced from time to time as provided in clause (d).

Apart from this, according to Mr.Kelkar, Clause 1.2 (e) clearly stipulated an arrangement, which would include the parties, executors, administrators, substitutes, successors and permitted assigns.

7] Relying upon the distinct clauses in the MRA, as per Mr.Kelkar,

the equipment financed under the Rental Agreement was to remain the property of LIQ and/or its assigns. He would also invite my attention to clause 8, in the Agreement which relate to assignment and subletting, which read as under :-

> "8. Assignment and Sub Letting :
> The Renter shall not transfer, deliver up, possession of, or sublet the equipment, and the Renter's interest in this Agreement shall not be assignable without prior written consent of LIQ; but nothing herein contained shall prevent LIQ from assigning, pledging, mortgaging, transferring or otherwise disposing, either in whole or in part, of LIQ's right hereunder. If the Renter is a corporation, then any sale or transfer of shares in the capital of the Renter shall be deemed to be an assignment under this Agreement, and the written consent of LIQ to such a sale or transfer shall be first had and obtained."

Another relevant clause to which my attention is specifically invited is clause 27, under the heading 'Assignment and Agency', which read thus :

> "27. Assignment and Agency
> LIQ may assign either absolutely or by way of security all or any of it's rights to receive rentals under this Agreement to any Bank or financial institution which provides financial assistance nto LIQ. Upon such assignment the Renter acknowledges that.
> (a) LIQ shall be entitle to transfer all Renter related information to such Bank;
> (b) where applicable, you will recognise the bank as the new owner of the equipment and that you will hold the Equipment on behalf of the bank subject to the terms and conditions of this Agreement.
> (c) The Renter shall not assign any of the Renter's obligations or rights hereunder to a third party."

9] In this very Agreement, Clause 32 provide for Arbitration, as a mode for dispute resolution and the clause is reproduced hereunder:-

> "32 Arbitration.
> All disputes, differences and/or claim arising out of or in connection with this Agreement attached hereto or the performance of this Agreement shall be settled by arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996, or any statutory amendment thereof and shall be referred to the sole Arbitrator appointed by LIQ. The place of arbitration shall be Mumbai and the award given by such an Arbitrator shall be final and binding on the parties to this Agreement."

8] The learned counsel for the Applicant Mr.Rohan Kelkar would thereafter invite my attention to the notification of assignment letter and according to him though it is not signed by the Applicant, on perusal of the contents of this letter, it is manifestly obvious that it has placed the present Applicant in the shoes of LIQ and this would bring within its ambit all the liabilities, entitlement etc. as provided in the Master Rental Agreement dated 27.01.2020 and would also cover a right to invoke arbitration.

9] I must therefore now construe the true intent of the documents, with rival claims being put forth by the contesting parties.

I have perused the notification of assignment letter annexed as Exhibit C to the Application. This letter bear the signature of the Director of the LIQ and it is addressed to the Respondent with

reference to the rental schedule No.Fel-101 dated 14.02.2020 of the Master Rental Agreement dated 27.01.2020. The letter invariably contain details of the assigned payments commencing from 01.03.2020 and ending on 01.12.2022.

The letter begins with the following recital :-

"This letter serves as Notification of Assignment of rental payment under subject Contract to M/s. Siemens Factoring Private Limited, having its registered Office at Plot no.2, Sector no.2, Khargar Node, Navi Mumbai-410210, hereunder referred to as the "Assignee".

The aforesaid notification/letter also include a clause for 'Rights and Remedies' which read thus :

> Rights and Remedies :
>
> "Assignee/Bank assumes none of the obligations of LIQ and/or the supplier of the Equipment/assets rented out under the subject contract. Your requirement to make payment to the assignee is mandatory and irrevocable and payment shall be made irrespective of any dispute or controversy which you may have with LIQ, the manufacturer or the seller of the assets, subject thereto you continue to retain all your rights and remedies under the Master Rental Agreement (MRA) dated 27th Jan, 2020 against LIQ and/or the Supplier of the Equipment.
>
> By this assignment, the assignee has stepped into the shoes of the LIQ under the subject Contract and will be entitled to enjoy, exercise and enforce all rights, discretions and remedies of the LIQ as assigned to them including the rights in respect of the said repayment of Lease rental.
>
> All words used but not defined in this notice but defined under the MRA and the rental schedule shall have the meanings respectively assigned to them in the MRA and the rental schedule as the case may be.
>
> This assignment is absolute and irrevocable. No

> changes in the Master Rental Agreement or its schedules will be made by the LIQ hereinafter and no letter/notices issued by any of the parties (Lessor or Lessee) shall be binding upon any party unless the same is accompanied with the specific written acceptance of the assignee (Bank)."

At the end of the letter, it is intimated to the Respondent, that it shall pass acknowledgment of acceptance of the terms mentioned therein and accordingly the Respondent has confirmed the receipt of the letter and by putting the signature of its CEO and MD, it has acknowledged its acceptance and necessarily its terms and conditions.

10] This notification of assignment also consist of an Arbitration clause which is somehow similar to the one contained in the Master Rental Agreement (MRA) except present clause contemplate appointment of Sole arbitrator by Siemens Factoring Pvt. Ltd. (SFPL)- the Applicant.

11] Undisputedly, the Applicant (SFPL) has not signed this document, which is in form of notification of assignment letter and that is why the argument is raised by the learned counsel for the Respondent to the effect that it do not amount to a binding arbitration agreement, as in terms of Section 7 of the Arbitration and Conciliation Act, the Agreement must be in writing and signed by the parties.

There cannot be any dispute about the said proposition, but I must also deal with the counter argument advanced by Mr.Kelkar, to the effect that when the Applicant, as an assignee has stepped into shoes of 'LIQ' and has undertaken to enjoy, exercise and enforce all rights, discretions and remedies available to 'LIQ', as assigned to it including the rights in respect of the said repayment of lease rental, even the arbitration clause in the MRA stand extended/assigned to the Applicant as an 'Assignee'.

12] I am definitely persuaded to accept the said argument, on a deeper and close scrutiny of the MRA and the Assignment Notification letter. On perusal of the indicators in the MRA which has clearly referred to 'LIQ' to mean and include its successors in business, assigns etc. on one hand and the Future Enterprises (Renter) to include its successor in business assigns etc. on the other hand. For the purposes of said Agreement it is specifically clarified that the arrangement between the parties would extend to their executors, administrators, substitutes, successors and permitted assigns. A specific clause in respect of assignment and subletting in the MRA impose a specific prohibition on the 'Renter' not to transfer, deliver possession of or sublet the equipment as the Agreement contemplate that the Renters interest in the agreement shall not be assignable,

without prior consent of the 'LIQ'. However, as far as 'LIQ' is concerned, a specific clause has permitted it to assign, pledge, mortgage, transfer or otherwise dispose either in whole or in part of its rights under the Agreement. A specific embargo is imposed on the Renter from assigning all its obligations or rights to a third party, whereas, the Agreement categorically permit 'LIQ' to assign either absolutely or by way of security, all or any of its rights, to receive rentals under the Agreement, to any Bank or financial institution, which provides financial assistance to it. Not only this, it is also made imperative for the 'Renter' to acknowledge such an Assignee of the LIQ.

13] In the light of reading of the aforesaid recitals in the MRA alongwith the 'rights and remedies' clause included in the Notification of Assignment in favour of the Applicant and which is duly communicated to the Respondent and acknowledgment by it, it has become evident that the Applicant has stepped into shoes of 'LIQ' and stand substituted in its place, by the Notification of the assignment letter for receipt of the rental payments mentioned in the said notification. By the assignment, the Applicant is held entitled to enforce all rights, discretions and remedies of the LIQ, as assigned to it, in respect of repayment of lease rental.

The question is whether it would cover a right to invoke arbitration, in case any dispute, difference and/ or claim arise out of or in connection with the Master Rental Agreement and pursuant thereto, whether an Arbitrator can be appointed. Though in the wake of latest position of law as regards unilateral appointment of arbitrator, it cannot be an Arbitrator appointed by the Applicant or LIQ, but on invocation of arbitration, this Court would exercise its power under sub-section 6 of Section 11, to appoint an Arbitrator.

14] The argument that the arbitration clause contained in the notification of assignment is not signed by the Applicant and therefore there can be no invocation of arbitration by the Applicant, in my considered opinion would not detain me as it can be seen that apart from the arbitration clause, the Applicant, being an assignee has stepped in the shoes of LIQ under the Master Rental Agreement dated 27.01.2020 and is entitled to invoke arbitration in terms of the arbitration clause contained in it.

The position of law as regards valid arbitration agreement between the parties is clear and unambiguous. An arbitration agreement can be a separate agreement between the parties agreeing that the disputes and difference arising between themselves to be referred for arbitration or an arbitration agreement may be in form of a

clause contained in the Agreement itself. In that sense, it is an Agreement within an Agreement. It can thus be a collateral term of a contract or independent and distinct from its substantive term.

Section (5) of Section 7 contemplate a situation where there is a reference in the contract to a document containing arbitration clause, which would constitute an arbitration agreement provided the contract is in writing and reference is such as to make that arbitration clause part of the contract.

The quintessential feature of an arbitration agreement is an arrangement necessarily or rather mandatorily requiring appointment of an Arbitrator/s by mutual consensus arrived between the parties.

15] In case of MR Engineers & Contractors (P) Ltd vs. Som Datt Builders Ltd. (2009) 7 SCC 696, the Supreme Court noted the distinction between reference to another document in a contract and incorporation of another document in a contract by reference. It has been held, that in first case the parties intended to adopt only specific portion and part of the referred document for the purpose of contract, whereas, in the second case, the parties intend to incorporate referred document in its entirety into the contract.

I do not find any substance in the submission of the learned counsel for the Respondent, who would submit that because the

arbitration clause comprised in a assignment document do not bind the Applicant, as it is not signed by him and hence he is not competent to invoke arbitration particularly when the Respondent do not dispute the assignment of 'LIQ' in favour of the Applicant and even has accepted the fact that the assignment is acted upon between the Applicant and the Respondent. If the rights of LIQ are specifically assigned in favour of the Applicant and it had undertaken to discharge all its liabilities and enjoy all its privileges and entitlement, there is no reason why the arbitration clause which permit the parties to refer the disputes for arbitration, arising out of the Master Rental Agreement cannot be invoked by the Applicant. If the arbitration clause is also additionally comprised in the notification of assignment, the object of which was only to apprise the Respondent that the Applicant shall henceforth stand in place of LIQ, when the MRA already contemplating the provision for assignment, merely because the said document which comprised of an arbitration clause in addition to the one in MRA is not signed, cannot be a ground by itself to exclude the Applicant from invoking arbitration since in my considered opinion it has assumed the role of 'LIQ'. The arbitration agreement being definitely assignable , just as any other contract and since the obligations and entitlement are assigned in favour of the Applicant, there is no reason why the arbitration agreement should stand excluded, being part of the contract

agreement. Hence, merely because the subsequent communication intimating the assignment to the respondent being not signed, which also comprise of an arbitration clause would not preclude the Applicant from invoking arbitration.

16] Now I shall deal with the arguments of the learned counsel for Respondent about legal position flowing from the decision of Justice G.S. Patel, in Vishranti CHSL (*supra*), which is pressed into service by him.

Before I make reference to the said decision, I deem it necessary to make reference to an earlier decision of this court, at Goa by ***R.D.Dhanuka, J***, in case of ***DLF Power Limited vs. Mangalore Refinery and Petrochemicals Limited, 2016 SCC OnLine Bom 5069***.

The facts of the present case are more closer to the one which were before the learned Single Judge in case of DLF Power Limited.

An Agreement in form of a contract for engineering and supply of equipments was entered on 16.04.1997 between the DLF Industries Limited (DIL), who undertook the performance and execution of contract in right earnest. In the intergenum the High court of Delhi and Punjab & Haryana approved a scheme of merger under which the Energy system business of the DLF Industries Limited (DIL) merged

with the DLF Universal Limited (DUL) as its energy system division. As a result of which, the rights and liabilities of DIL in the contract stood transferred to DUL and it was expected to discharge its rights and liabilities.

Subsequent to this event, the energy system division of DLF Universal Limited (DUL) was purchased through a Memorandum of Sale by the Petitioner before the High Court i.e. DLF power Limited and the Petitioner pleaded that by virtue of the said arrangement it became absolute successor in the interest of DIL and DUL in respect of the two contracts which were originally entered between the DIL and Respondent.

Pursuant to this, the Petitioner requested the Respondent for release of balance payment, extension of contractual completion period, release of bank guarantee, return of excess material, payment of additional expenses incurred by it and thus it gave rise to a dispute between the parties, which resulted in the Petitioner filing Petition under Section 9 of the Arbitration and Conciliation Act *interalia* praying for interim measures in form of protection against the Respondent from encashing the bank guarantee or receiving money thereunder.

The Arbitration Petition came to be disposed off with a direction to the Petitioner to deposit some amount in the Court subject which the Respondent was directed not to encash the bank guarantee and it

would stand release and discharged. The Respondent filed an application before the Arbitral Tribunal under Section 16 questioning locus of the Petitioner to initiate process and pursue the proceedings and Arbitral Tribunal dismissed the Petition on the ground that it has no jurisdiction to entertain the same.

This order was subjected to challenge before the Learned Single Judge, who dealt with similar contentions advanced before me and framed a question for consideration, whether separate arbitration agreement was required to be entered into between the Petitioner and Respondent for adjudication of disputes having arisen in the original contracts between the Respondent and DLF Industries Limited or assignment of the said contract, accepted by the Respondent, would include assignment of arbitration agreement by conduct or otherwise.

In the wake of the issue so framed, the learned Single Judge, by referring to the decision in the case of M.R. Engineers & Contractors Pvt. Limited , recorded as under :-

> "67. It is not the case of the respondent that the contract between the respondent and the DLF Industries Limited was not assignable. Clause 19.1 of the General Conditions of Contract appended to the said contract dated 16th April, 1997 provided for assignment of the obligation or any benefit or interest in the said contract or any part thereof, however explicit prior approval in writing of the other party. A perusal of the said contract dated 16th April, 1997 clearly indicates that the DLF Industries Limited which was a party to the said contract as a contractor included its legal successor and permitted assigns. The intention of the party to the said contract dated 16th April, 1997 is clear from the provisions of the said contracts that the said contracts were assignable in toto. In my view the judgment of the Court of Appeal in case of Shayler v. Woolf (supra) would assist the

> case of the petitioner.
>
> 79. In my view, no separate execution of the arbitration agreement was required to be executed between the petitioner and the respondent, in view of the fact that the said two contracts containing arbitration agreement was already assigned in favour of the petitioner and the entire contracts were acted upon by both the parties herein.
>
> 80 In view of the assignment of the said two contracts in favour of the petitioner, the arbitration agreement contained therein also stood assigned in favour of the petitioner. The petitioner had thus locus standi and had rightly invoked the said arbitration agreement. The impugned order holding that arbitration agreement was not assigned in favour of the petitioner shows patent illegality."

17] From the above observation, it can be clearly discerned that an arbitration agreement can be assigned and where there is a specific provision for assigning of rights and liabilities, and the assignment was duly accepted by the Respondent, is clearly indicative of the intention of the parties in implementation of the rights, obligations, duties and benefits of the original contract.

The learned Single Judge has clearly repelled the contention of the Respondent that all other rights, obligations and benefits under the contract could be accepted by the Respondent from the Petitioner as successor of DIL and DUL, however, benefit of the arbitration agreement could not be claimed by the petitioner.

18] In contrast, the decision cited before me in case of Vishranti CHSL, which is at little variance has to be read in the facts which would clearly reveal that the Applicant entered into the Development

Agreement with one YCC for redevelopment of its property and it comprised of an arbitration clause. In the *intergenum* there was assignment of the development rights by a regular Deed executed by YCC in favour of the Applicant and Respondent "Tattva Mittal Corporation Pvt. Ltd.". The argument advanced was, the arbitration agreement was also assigned. The Assignment Deed was specifically relied upon which enumerated obligations of the assignee as contained in Para 6.

While dealing with the said contention and authorities cited before the learned Single Judge in case of Alimenta SA vs. National Agricultural Cooperative marketing Federation of India Ltd and Anr. (1987) 1 SCC 615 as well as in case of MR Engineers and Contractors (P) Ltd. vs. Som Datt Builders Ltd. (2009) 7 SCC 696 and Inox Wind Ltd. vs. Thermocables Ltd. (2018) 2 SCC 519, wherein, it was held that generalized reference to a previous document was insufficient to incorporate arbitration agreement subject to a few defined exceptions.

In this context, it was categorically held as under :

> "17. The rationale underlying the MR Engineers line of authority is self-evident. An arbitration agreement is an agreement within an agreement. Not every contract or agreement requires an arbitration clause or agreement. Many contracts go without. An arbitration agreement has nothing at all to do with the reciprocal obligations or their performance (as noted in Alimenta). It is a dispute resolution mechanism chosen by the parties. If, therefore, it is to be 'carried forward' to a later agreement which introduces a new contracting party, then the arbitral intent between the original party and the assignee of the other party must be made manifest. This can be done by having a separate arbitration agreement or by incorporating by specific reference

> the earlier arbitration agreement. The assignee can not be 'assumed' to have consented to the arbitral agreement. Say there is a contract between A and B. It has an arbitration agreement. With A's consent, B assigns its rights and obligations to C. Now the contract is between A and C. In this later contract, there must be a specific reference to the arbitration clause in the agreement between A and B, for otherwise we can never know if C had agreed to arbitration as a dispute resolution mechanism. The intention to arbitrate is not manifested. This is, of course, subject to the specific exception MR Engineers carved out. Most importantly, a generalized reference to the previous contract ("all terms and conditions" etc.) does not satisfy the requirement of Section 7 of the Arbitration Act that an arbitration agreement must be in writing. The reason it must be in writing --though the writing can take many forms – is precisely because an arbitration agreement is an agreement-within-an-agreement, never compulsory, unrelated to contractual performance and concerned only with an entirely optional alternative dispute resolution mechanism. This is why we say an arbitration is a creation of contract and an arbitrator is a creature of contract. If what is argued today is to be accepted, then, apart from being wholly contrary to MR Engineers and the settled law, Section 7 might as well not exist".

Apparent reading of above para would indicate that what is recorded above is absence of the intention to arbitrate and on facts it was concluded that the arbitration clause 29 in the original development agreement has not been incorporated by reference as required by law in the Assignment Agreement on 22.01.2016.

19] However, as distinguished, when I turn to the facts of the present case, Master Rental Agreement itself comprehended 'LIQ' to be and included its assigns and the agreement contemplated, in this context otherwise include, parties, executors, administrators, substitutes, successors and permitted assigns. It was permissible for the 'LIQ' vide Agreement to assign, absolutely all or any of its rights, receive rentals

under the Agreement to any bank or financial institution, which provide financial assistance to LIQ and upon such acknowledgment it was agreed that the Renter acknowledged the bank as new owner of the equipment and shall hold the equipment on behalf of the bank, subject to terms and conditions of the Agreement. Accordingly, the rent schedule was executed between the Respondent and LIQ. The notification of assignment letter, assigning rental payment starting from a particular date and ending on a particular date, was informed to the Respondent by LIQ with a request that all assigned payments shall be made in favour of the Assignee i.e. M/s. Siemens Factoring Pvt. Ltd. as per bank account. This notification separately carved out a clause for arbitration, by making over the disputes, differences and/or claims arising out of or in connection with the Agreement, to a Sole Arbitrator to be appointed by Siemens Factoring Pvt. Ltd. i.e. the Applicant. Though it is sought to be vehemently argued that this notification of assignment is not signed by the Applicant, I do not think that this is a determinative factor to decide whether the Applicant can invoke arbitration.

The arbitration clause contained in the Letter of Assignment clearly stipulate that, assignee has stepped into the shoes of the LIQ under the subject contract ie. MRA and is entitled to enjoy, exercise, enforce all rights, discretions and remedies of the LIQ as assigned to

them including the rights in respect of the said payment of lease rental. It is also clarified that all words used but not defined in the notice, but defined in MRA and rental schedule shall have the same meaning respectively assigned in the MRA and rental schedule. The assignment was notified to be absolute and invariable.

20] The above letter of intimation was forwarded by LIQ and acknowledged by Respondent, thereby accepting that the Applicant has now stepped into shoes of LIQ which was to receive rentals.

The Respondent has acted upon the notification of assignment and effected payment in favour of the Applicant. In the wake of aforesaid factual scenario, by referring to the intention of the parties, it can be safely gathered that LIQ the original party to the original agreement, when it assign its rights, liabilities in favour of the Applicant, it also include a right to arbitrate. The intention of the parties can very well be gathered from the correspondence exchanged between them and therefore when a dispute arose as regards payment of rents, the Applicant invoked arbitration having stepped into footsteps of LIQ to whom the amount was due and payable and particularly when the Respondent accepted obligations as substitute of the assigners, I am unable to persuade to accept the submission advanced that there is no arbitration agreement assigned between the Applicant and

Respondent. There is no need of separate execution of arbitration agreement between the Applicant and Respondent in view of the fact that all the rights in favour of LIQ has been assigned in favour of the present Applicant and this assignment was specifically acknowledged by the Respondent, with the arbitration remedy also being assigned in its favour, the Applicant has rightly invoked arbitration and hence I deem it appropriate to exercise the power to appoint a SoleArbitrator as prayed in the petition.

In exercise of the said power, Mr.Feroz Bharucha, Advocate of this court is appointed as a Sole Arbitrator to adjudicate the disputes that have arisen between the parties out of the MRA dated 27.01.2020 and the notification of assignment dated 17.02.2020, 20.02.2020 and 04.03.2020. The appointment of the sole Arbitrator is subject to the following terms and conditions :

TERMS OF APPOINTMENT

(a) Communication to Arbitrator of this order :-

(i) A copy of this order will be communicated to the learned Sole Arbitrator by the Advocates for the applicant/petitioner within one week from the date this order is uploaded.

(b) Disclosure : The learned Arbitrator, within a period of 15 days before entering the arbitration reference, shall forward a statement of disclosure as per the requirement of Section 11(8) read with Section 12(1) of the Arbitration and Conciliation Act, 1996, to the Prothonotary & Senior Master of

this Court, to be placed on record of this application, with a copy to be forwarded to both the parties.

(c) Appearance before the Arbitrator : The parties shall appear before the Sole Arbitrator within a period of two weeks from today and the learned Arbitrator shall fix up a first date of hearing in the week commencing from 19/03/2023. The Arbitral Tribunal shall give all further directions with reference to the arbitration and also as to how it is to proceed.

(d) Contact and communication information of the parties : Contact and communication particulars are to be provided by both sides to the learned Sole Arbitrator. This information shall include a valid and functional E-mail address as well as mobile numbers of the parties, participating in the process as well as of the Advocates.

(e) Section 16 application : The respondent is at liberty to raise all questions of jurisdiction within the meaning of section 16 of the Arbitration Act. All contentions are left open.

(f) Fees : The learned Arbitrator shall be entitled for the fees as per the Bombay High Court (Fee Payable to Arbitrators) Rules, 2018 and the arbitral costs and fees of the Arbitrator shall be borne by the parties in equal portion and shall be subject to the final Award that may be passed by the Tribunal.

(g) Venue and seat of Arbitration : Parties agree that the venue and seat of the arbitration will be in Mumbai.

(h) Procedure : These directions are not in derogation of the powers of the learned Sole Arbitrator to decide and frame all matters of procedure in arbitration.

(i) All contentions of both sides are left open to be raised by the respective parties before the Arbitral Tribunal, in

accordance with law.

Arbitration Application stand disposed off in the aforesaid terms.

[**BHARATI DANGRE,J]**